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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

MUNDY'S EX'RS *v.* GARLAND *et ux.*

Nov. 12, 1914.

[83 S. E. 491.]

1. Action (§ 24*)—Equitable Relief in Action at Law.—Under Code 1904, § 3299, providing that in an action on contract defendant may file a plea setting up failure of consideration, fraud, breach of warranty, or any other matter entitling him to recover damages at law, or to relief in equity against the contract, a plea in an action on a bond for the purchase price to real estate, averring that plaintiff had no authority to sell, that plaintiff had no title to an undivided third interest in the land, that the land was subject to liens of record, that the agreement sued on was a mere option to sell, and that plaintiff had refused a tender of the price, and elected not to sell, did not seek a rescission and reinvestment of the title in the vendor, within the rule that such a plea is not permissible under the statute.

[Ed. Note.—For other cases, see Action, Cent. Dig. §§ 153-155; Dec. Dig. § 24.* 1 Va.-W. Va. Enc. Dig. 153.]

2. Vendor and Purchaser (§ 308*)—Performance of Contract—Title of Vendor.—A vendor, in order to recover for purchase price, must himself be able to keep and perform the agreement on his part as to title; but it is not necessary to his recovery that he be able to convey such title when he contracts, although he must be able to do so at the time for performance.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 862, 877-899; Dec. Dig. § 308.* 13 Va.-W. Va. Enc. Dig. 508; 14 Va.-W. Va. Enc. Dig. 1050; 15 Va.-W. Va. Enc. Dig. 1035.]

3. Vendor and Purchaser (§ 145*)—Performance of Contract—Tender by Purchaser.—Under a contract giving G. an option to purchase real property at any time before a specified date, the vendor, after the purchaser's tender of payment and demand for a deed, was entitled to a reasonable time to deliver the deed.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 276; Dec. Dig. § 145.* 13 Va.-W. Va. Enc. Dig. 498; 14 Va.-W. Va. Enc. Dig. 1052; 15 Va.-W. Va. Enc. Dig. 1037.]

4. Vendor and Purchaser (§ 134*)—Construction of Contract—Title.—Under a contract for the sale and purchase of land to be con-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

veyed by warranty deed without incumbrances, the purchaser was entitled to a conveyance of a good record title free from incumbrance; but, where the contract does not require a perfect record title, he as a rule is not entitled to such record title, if the title is in fact good.

[Ed. Note.—For such other cases, see *Vendor and Purchaser*, Cent. Dig. §§ 238, 250-254, 258; Dec. Dig. § 134.* 13 Va.-W. Va. Enc. Dig. 496; 14 Va.-W. Va. Enc. Dig. 1050; 15 Va.-W. Va. Enc. Dig. 1037.]

5. Vendor and Purchaser (§ 308*)—Performance of Contract—Vendor's Title.—Under a contract for the sale and purchase of land, entitling the purchaser to a conveyance of a good title free from incumbrances, but not in terms entitling him to a good record title, he could not defeat a recovery for breach of contract on the ground that the record did not show that the vendor had a good title, when in fact he did, and when such apparent defect in the title was not actually known to either party, and did not in any way affect their action.

[Ed. Note.—For other cases, see *Vendor and Purchaser*, Cent. Dig. §§ 862, 877-899; Dec. Dig. § 308.* 13 Va.-W. Va. Enc. Dig. 508; 14 Va.-W. Va. Enc. Dig. 1050; 15 Va.-W. Va. Enc. Dig. 1035.]

6. Vendor and Purchaser (§ 315*)—Action for Price—Burden of Proof.—Where a contract to purchase land or to pay the difference between the fixed contract price and the amount realized at a public sale entitled the purchaser to a title free from incumbrances, the vendor, in an action for the difference, had the burden of proving that incumbrances had been satisfied or released before the time for sale.

[Ed. Note.—For other cases, see *Vendor and Purchaser*, Cent. Dig. §§ 928-931; Dec. Dig. § 315.* 13 Va.-W. Va. Enc. Dig. 543.]

7. Vendor and Purchaser (§ 267*)—Vendor's Lien—Discharge.—Where a vendor's lien is retained for the benefit of the vendor's creditors, a subsequent release of the lien by the vendor was not evidence of a discharge of the debts secured.

[Ed. Note.—For other cases, see *Vendor and Purchaser*, Cent. Dig. §§ 751-758; Dec. Dig. § 267.* 14 Va.-W. Va. Enc. Dig. 489; 14 Va.-W. Va. Enc. Dig. 1060; 15 Va.-W. Va. Enc. Dig. 1046.]

8. Vendor and Purchaser (§ 317*)—Vendor's Lien—Satisfaction.—Whether such debts had been satisfied held a question for the jury upon all the evidence.

[Ed. Note.—For other cases, see *Vendor and Purchaser*, Cent. Dig. §§ 934-937; Dec. Dig. § 317.* 13 Va.-W. Va. Enc. Dig. 567; 14 Va.-W. Va. Enc. Dig. 1058; 15 Va.-W. Va. Enc. Dig. 1046.]

9. Evidence (§ 131*)—Relevancy—Similar Conditions.—In a vendor's action on the purchaser's contract to pay the difference between a fixed price and the price that the property would bring at a public sale, evidence that the property later sold for a less price than it did

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

on the first sale was inadvisable on the question as to whether the sale had been properly advertised, where the similarity of conditions at the two sales did not appear.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 399-402; Dec. Dig. § 131.* 13 Va.-W. Va. Enc. Dig. 552.]

10. Appeal and Error (§ 1059*)—Harmless Error—Exclusion of Evidence.—Error, of any, in the exclusion of such evidence, was not prejudicial to the vendor, where the court at his request properly instructed that the only question as to the sufficiency of the advertisement was his good faith in selecting the method of advertisement.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4208; Dec. Dig. § 1059.* 1 Va.-W. Va. Enc. Dig. 595; 14 Va.-W. Va. Enc. Dig. 94; 15 Va.-W. Va. Enc. Dig. 69.]

11. Vendor and Purchaser (§ 330*)—Vendor's Action for Breach—Liability.—Under a contract whereby, in consideration of the extension of a contract for the sale and purchase of land, the purchaser undertook to purchase by a certain day or to pay the vendor the difference between the purchase price and the proceeds of the land at public sale, the purchaser, who did not exercise his option to purchase by an offer in good faith to perform his contract, and was not prevented from doing so by any act or default of the vendor, after advertisement and sale of the property at public sale for less than the contract price, was liable for the difference.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 953-956; Dec. Dig. § 330.* 13 Va.-W. Va. Enc. Dig. 543; 14 Va.-W. Va. Enc. Dig. 1057; 15 Va.-W. Va. Enc. Dig. 1045.]

Error to Circuit Court, Botetourt County.

Action by W. P. Mundy and others, executors of the estate of James Mundy, deceased, against J. L. Garland and wife. Judgment for defendants, and plaintiffs bring error. Reversed, and remanded for new trial.

Hall & Woods, of Roanoke, and *C. M. Lunsford* and *E. V. Barley*, both of Fincastle, for plaintiffs in error.

Benjamin Haden, of Fincastle, for defendants in error.

POCAHONTAS CONSOL. COLLIERIES CO., Inc., *v.* HAIRSTON.

Jan 12, 1915.

[83 S. E. 1041.]

1. Trial (§ 232*)—Instructions—Direction of Verdict.—An instruction which directs a verdict on a finding of certain facts must embrace all the elements necessary to support the verdict.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 524, 525; Dec.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.